

To,  
Hon'ble Justice (Rtd.) Shri B.N. Srikrishna  
Former Judge, Supreme Court of India  
Chairperson, Committee of Experts on Data Protection Framework  
Email : bnsrikrishna@gmail.com; srikrishna@nic.in

November 5<sup>th</sup>, 2017

Dear Hon'ble Justice Srikrishna,

Subject: Letter of concern on the Office Memorandum No.3(6)/2017-CLES dated July 31, 2017, constituting a committee of experts to deliberate on a Data Protection Framework

This letter is the initiative of [Rethink Aadhaar](#) – a group of concerned citizens who have come together to examine the lack of regulations and guidelines in use of various forms of data using technology. We are alarmed and dismayed at the potentially grave implications of large databases curtailing fundamental rights and democratic principles. The most glaring example of gathering and disseminating such data is Aadhaar.

This group of concerned citizens is worried about non-transparency in the “Committee of Experts to deliberate on and recommend a data protection framework for India”. Its composition and selection of members is also problematic.

While we are confident that you and your office will strive to be fair and balanced, we would like to place before you the matter of inadequate representation within the committee. It is desirable that the composition of the committee should be diverse to bring in various opinions, on what is now a contentious issue, into the deliberations of the committee. It would also help to bring the point of view of the citizen within the privacy and data protection draft framework, particularly with regard to issues of consent.

It is vital that the idea of consent be central to the proposed data protection framework. The framework must be both relevant to people and take into consideration Indian realities, so that citizens are able to differentiate between manufactured and informed consent. Consent must be understood in the context of the interconnectedness of data to many aspects of democratic principles and rights. There can be no argument that data protection is not merely about the protection of data but really about the protection of people.

This is an effort to restrict and make accountable the powers of the state and commercial entities involved in these activities. Given the current scenario where ‘data is the new oil’, any understanding of the impact of policy will necessitate the inclusion of civil society members who have been examining the impact of such initiatives on democratic rights. This includes matters of privacy, surveillance, aggregation of data, the commercial

collection of data and its use and, more broadly, data used to restrict constitutional and other rights.

Another critical aspect of the data protection framework is to define a complementary relationship between the right to information and the right to privacy. For this, we strongly recommend the inclusion of representatives of the Right to Information movement.

Most members on the current committee have in the past voiced or echoed views that seem to support Aadhaar, the brand created by the UIDAI. Some have even taken stands in the Supreme Court to challenge the fundamental right to privacy. A committee created to look at a fundamental issue which will impact this country needs to be balanced and cannot be biased towards one position, particularly when there might be conflicts of interest.

There is a precedent set by the Government of India where the drafting privacy and data protection law included people from varied backgrounds. One such attempt was through the Justice A.P. Shah Committee that submitted its report on October 16, 2012. This report brought in the views of many sectors of civil society. This practice may be seen as a positive precedent, and we strongly urge that it be followed in the composition of the current committee as well.

In view of the fact that your committee allows for co-option, we request you to please consider including the names of eminent citizens who have been consistent in advocating for peoples' rights. We believe their induction in the committee will increase diversity and ensure that civil society voices are adequately represented while deliberating on a complex code of far-reaching importance. The wealth of experience such people could bring to the committee should not be underestimated.

We further ask you to kindly take steps to ensure high transparency in the working of the committee. We would like to put forth the suggestion that all meeting notes may be made available to citizens, and submissions by members be pro-actively disclosed, as the deliberations proceed. We strongly urge that all documents referred to by the committee in their deliberations be shared publicly, and contemporaneously, to enable meaningful engagement with the work of the committee. Further, we trust that when a draft of the recommendations is prepared, it will be put up for public consultation for wider input.

As people who use digital technology every day for communication, banking, research, travel bookings, security, entertainment, as well as for the more efficient delivery of welfare benefits, we have concerns about the data and platforms being generated through all these activities and their use. We would be grateful if you could meet some of us and give us the opportunity to further discuss these issues in detail.

We hope you would consider this letter as part of the pre-legislative process in the creation of a data protection framework.

With thanks and regards,

Justice (Retd.) A. P. Shah, Former Chief Justice of Madras High Court and former Chief Justice of Delhi High Court

Amit Bansal, Rethink Aadhaar

Amrita Johri, National Campaign for People's Right to Information (NCPRI) and Satark Nagrik Sangathan (SNS)

Anjali Bharadwaj, National Campaign for People's Right to Information (NCPRI) and Satark Nagrik Sangathan (SNS)

Dr. Anupam Saraph, Former governance and IT advisor to Goa's former Chief Minister Manohar Parrikar

Aruna Roy, National Campaign for People's Right to Information (NCPRI) and Mazdoor Kisan Shakti Sangathan (MKSS)

Prof. G. Mohan Gopal, Former Director, National Judicial Academy, former VC/Director, National Law School of India University, Bangalore

Gopalkrishna Gandhi, Former IAS officer and diplomat and former Governor of Bihar and West Bengal

Indira Jaising, Founder of Lawyers Collective and former Additional Solicitor General of India

Prof. (Retd.) Jagdeep Chhokar, Indian Institute of Management, Ahmedabad and Founder of Association for Democratic Reforms (ADR)

Kavitha Kurugranti, Alliance for Sustainable & Holistic Agriculture (ASHA)

Nachiket Udupa, Rethink Aadhaar

Nikhil Dey, National Campaign for Peoples Right to Information (NCPRI) and Mazdoor Kisan Shakti Sangathan (MKSS)

Praavita, Rethink Aadhaar

Prashant Bhushan, Public Interest Lawyer and Activist; Founder member of the Swaraj Abhiyan

Major General S. G. Vombatkere, Petitioner in Aadhaar related case in Supreme Court

Shantha Sinha, First Chairperson of National Commission for Protection of Child Rights

T M Krishna, Carnatic singer and winner Indira Gandhi Award for National Integration and Ramon Magsaysay

Prof. Trilochan Sastry, Indian Institute of Management, Bangalore and Founder of Association for Democratic Reforms (ADR)

Uma Chakravarti, Historian and democratic rights activist

Dr. Upendra Baxi, Professor of Law, University of Warwick, former VC, University of Delhi and University of South Gujarat, Surat

Venkatesh Nayak, National Campaign for People's Right to Information (NCPRI) and Commonwealth Human Rights Initiative (CHRI)

Wajahat Habibullah, First Chief Information Commissioner and former Chairperson, National Commission for Minorities

CC:

1. Shri Ravi Shankar Prasad  
Hon'ble Minister Law & Justice,  
Electronics & Information Technology,  
mljoffice@gov.in
2. Shri Ajay Prakash Sawhney  
Secretary (Electronics & Information Technology)  
secretary@meity.gov.in